IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. application No. 463 of 2001

Date of decision:- 01.05.2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date:- 01.05.2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No. 463 of 2001
(Old No. 3833 of 1992)

Kunwar Singh Powar
S/o late Sri Amar Singh Panwar
R/o E2, hathi Barkala Estate Dehradun
P.S. Dalanwala
District Dehradun .....Applicant

Versus

Smt. Nirmal Devi W/o Shri Sudhir Kumar
R/o Quarter No.G-9 Hathibarkala Estate
P.S. Dalanwala
District Dehradun ...Respondent

Sri Lokendra Dobhal learned counsel for the applicant.
Sri Lalit Verma learned AGA.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the complaint dated 12.02.1992 and proceedings of criminal case No.438/1992 pending before the Addl. Chief Judicial Magistrate, Dehradun.

2. Brief facts of the case are that on 07.01.1992 the applicant lodged a report that at about 7:30am one-Sudhir Kumar came to his office alongwith one lady and started abusing him. Sudhir Singh also caused injuries upon the applicant by kicks and fists. The medical of the applicant was conducted on 07.01.1992 and certain injuries were found on his person. Thereafter, on 13.01.1992 Smt. Nirmal Devi (respondent) W/o Sudhir Kumar filed a complaint bearing No.187/1992 before the Addl. C.J.M. under section 451/509 IPC that her husband is employed in the same office in which the applicant is employed. It was further alleged that there was a dispute regarding the government accommodation between the applicant and her husband. It was further

alleged that on 06.01.1992 the applicant came to her house and stated that if she would stay with him for a night then he would settle the dispute regard the government accommodation. Thereafter, on 20.01.1992 the applicant gave a report to the Senior Superintendent of Police, Dehradun alleging therein that he was assaulted by one-Sudhir Kumar on 07.01.1992 at about 9:30am. It was further alleged that he received some anonymous telephone calls on his residential phone during the day time and odd hours in the night.

3. The statement under section 200 Cr.P.C. was recorded on 13.01.1992. Thereafter, the Magistrate dismissed the complaint No.187/1992 for non-prosecution on 11.02.1992. A fresh complaint bearing No.438/1992 was filed by the respondent in the court of Addl.CJM on the same allegations made earlier. Thereafter, the Magistrate took cognizance under the aforesaid section. Feeling aggrieved by this, the present petition has been filed.

4. The case has been received on transfer from Allahabad High Court after creation of State of Uttaranchal. Thereafter, the notice was sent to the parties. It was reported by the Office that the service is sufficient upon the respondent. None appeared for the respondent despite service.

5. Heard Sri Lokendra Dobhal learned counsel for the applicant and Sri Lalit Verma learned A.G.A.

6. It was contended on behalf of the applicant that the present case is a summon trial. Section 451 IPC provides the imprisonment of two years, whereas

section 509 IPC provides the simple imprisonment for a term which may extend to one year. Learned Magistrate has taken the cognizance on these two counts. The complaint was filed under section 451 & 509 IPC. It was further contended that section 256 Cr.P.C. clearly provides that if a complaint of summon's trial is dismissed, the same will be amounting to acquittal. Perusal of the record reveals that the complaint pertains to section 451 & 509 IPC. Both are the summons trial. The Magistrate has to follow three options when the complainant is absent on the date of hearing of the complaint:-

(i) to acquit the accused;

(ii) to adjourn the case and

(iii) to dispense with the attendance of the complainant and proceed with the case.

7. In the instant case, the Magistrate has taken the recourse to dismiss the complaint and as such it will amount to acquittal. The Magistrate has no jurisdiction to register the complaint by revoking his earlier order by which the compliant was dismissed for non appearance of the complainant. Section 465 Cr.P.C. cannot be applied to cure the illegality. The complainant had an option either to challenge the dismissal order in revision or to come before the higher court. The respondent had not opted the said course to challenge the earlier order before the higher court. The respondent had opted to file a subsequent compliant before the same court on the same allegations. Since the order of dismissal of the compliant is in exercise of power vested upon the Magistrate under section 256 Cr.P.C., hence it will amount to acquittal of accused and only an appeal may

be filed against such order of acquittal and the subsequent complaint is not maintainable on the facts and circumstances of the case.

8. In view of the foregoing discussions, I am of the view that the present complaint as well as proceedings is liable to be quashed.

9. The petition is allowed. The complaint dated 12.02.1992 and proceedings of criminal case No.438/1992 pending before the Addl. Chief Judicial Magistrate, Dehradun are hereby quashed.

(J.C.S. Rawat, J.)

Dated 01.05.2006
LSR